

(a) The Final Acceptance Tests for (a) Release 6 and (b) Post-Release 6 shall each be performed on the application in the Production Usage environment. As used herein, the term "Production Usage" shall mean Deployment of the Fixed Price Application is complete and the County has commenced usage of such application in the live environment on a real time basis. As used in this section, "Deployment" shall have the meaning set forth in Section 5.1.11 of Schedule 1.4.2 of the Agreement, and shall also mean that user acceptance testing has been completed, and cutover to live, operational use by the County has occurred, with the Fixed Price Application serving as the County's system of record.

(b) The County shall commence performance of the Final Acceptance Test for (i) Release 6, no later than the first business day after written acceptance by the County of successful Deployment of Release 6, and (ii) Post-Release 6, no later than the first business day after written acceptance by the County of successful Deployment of Post-Release 6. Subject to the provisions of Section 6.9.2 above, the County shall have a maximum of sixty days (60), two (2) payroll check cycles, or one (1) financial month-end close, whichever is greatest, in which to conduct Final Acceptance Testing for each release.

(c) The Final Acceptance Criteria for each release, as applicable, shall include a review for fulfillment of the functional requirements set forth in Schedule 1.4.2 and the appendices attached thereto (Transformation Services), as confirmed by a detailed check-off of a requirements traceability matrix populated and cross-referenced to such functional requirements. Contractor will provide the necessary assistance to the County to verify that the requirements traceability matrix is comprehensive, and to assist with the County's performance of the validation process.

## **7. FINANCIAL TERMS**

As the sole and entire financial consideration for all of the Services to be performed by Contractor and for all of the other tasks, services, and obligations of Contractor under this Agreement, the County shall pay to Contractor the amounts set forth in this Section 7. Except as specifically provided in Section 7.1.5, below, at no time and under no circumstance shall the County pay Fees in any Contract Year that exceed, in the aggregate, the Maximum Annual Fee, as determined in accordance with such Section, for such Contract Year. No work performed by Contractor for the County between the Signing Date and the Cutover Date in order for Contractor to be prepared for a smooth cutover of operational responsibility for the Services, including work in preparation for accomplishment of the Transition, shall obligate the County to make any payments to Contractor; provided, however, that if the Effective Date occurs but the Cutover Date does not occur as a result of any circumstance other than Contractor's Default, then Contractor shall be reimbursed by the County for Contractor's costs or expenses incurred by Contractor, in connection with preparation for the Transition after the Effective Date, provided such costs and expenses were approved in advance and in writing by the CTO. If the Cutover Date does occur, no such costs or expenses shall be reimbursed by the County, except as such costs and expenses have been included in the Initiation Fee.

## **7.1. Fees**

### **7.1.1. Initiation Fee**

The County shall pay the Initiation Fee in accordance with the terms and conditions of this Agreement and as set forth in Schedule 7.1.

### **7.1.2. Designated Fees**

The County shall pay the specified Designated Fees during the Term in accordance with the terms and conditions of this Agreement and as set forth in Schedule 7.1.

### **7.1.3. Annual Services Charge**

The County shall pay the specified Annual Services Charge, as adjusted, for each year of the Term, in accordance with the terms and conditions of this Agreement and as set forth in Schedule 7.1.

### **7.1.4. Resource Charges and Credits**

For each month during the Term, Contractor shall calculate the quantity of Resource Units utilized by the County during that month and report such quantity to the County in accordance with the format described in Section 17, together with the supporting information and documentation required under such Section. Contractor shall calculate ARCs and/or RRCs in accordance with the terms and conditions of this Agreement and as set forth in Schedule 7.1. The County shall pay ARCs and Contractor shall pay or credit (or refund, if the Term has ended) RRCs in accordance with the terms and conditions of this Agreement and as set forth in Schedule 7.1.

### **7.1.5. Maximum Annual Fee**

(a) Within thirty (30) days prior to the end of each Contract Year, the County shall determine, in its sole discretion, the Maximum Annual Fee for the forthcoming Contract Year, and shall notify Contractor of such amount. Such amount shall be based, in part, upon the County and Contractor's projection of the County's requirements for Services for such Contract Year and shall be subject to annual appropriations by the County of sufficient funds.

(b) On a monthly basis, Contractor shall report to the County the Fees incurred to-date during each Contract Year and the amount of Fees projected to be incurred in the remaining months of the Contract Year. If either Contractor or the County reasonably determine, based upon such monthly report, that the Fees that would be payable are likely to exceed the Maximum Annual Fee prior to the end of the relevant Contract Year, the Parties shall cooperate to make adjustments to the Services, or to the County's requirements in respect of the Services, so that the Fees do not exceed the Maximum Annual Fee. Alternatively, the County may, in its sole discretion, increase the Maximum Annual Fee so that the Maximum Annual Fee is not

exceeded; provided, however, that in no event shall the Maximum Annual Fee be increased except by the express written consent of the Contracting Officer.

(c) In the event that the Maximum Annual Fee is exceeded despite the processes described in subsection (b), the County shall be obligated to pay Contractor fees in respect of Services in excess of the Maximum Annual Fee that the County expressly requests and that Contractor provides to the County. The County shall not be obligated to pay Contractor fees in respect of Services in excess of the Maximum Annual Fee that the County has not requested or that the County has directed Contractor to cease providing.

## **7.2. Shared Savings**

As part of its responsibilities to optimize efficiency and cost-effectiveness of its provision of the Services, Contractor shall use its best efforts to increase the gain and/or cost savings accruing to the County ("Savings") associated with the Services, without reduction in the MASLs and without increase in the overall costs to the County associated with the Services. Beginning as of January 1, 2002, Contractor shall submit a minimum of two Savings proposals to the County each Contract Year as described in this Section 7.2, which Savings proposals in each Contract Year must total in the aggregate at least five hundred thousand dollars (\$500,000), except that with respect to Contract Year 7, the Savings proposals for such year shall total in the aggregate at least four hundred seventy-five thousand three hundred fifty dollars (\$475,350). Contractor shall submit the initial Savings proposal for each Contract Year to the County prior to June 30th of such Contract Year, except that with respect to Contract Year 3, Contractor shall submit the initial Savings proposal for Contract Year 3 within thirty (30) days of the Amendment Effective Date. The Parties shall evaluate and implement, if applicable, the Savings proposals in accordance with the Work Order process set forth in Section 8.4 and the terms of Schedule 7.2 hereof. The County shall pay to Contractor a portion of such Savings in accordance with Schedule 7.2. Savings shall not include any gain or cost savings resulting from: (i) Contractor's performance of the Base Services; (ii) the County or any Department directing Contractor to implement a cost-saving or efficiency-enhancing solution; or (iii) a decrease in volumes, other usage-based savings, or any industry-wide technical advance. In the event that Contractor at any time fails to submit the Savings proposals in accordance with the terms of this Section 7.2, then Contractor shall immediately provide a credit to the County, which credit the County, in its sole discretion, may use for any purpose, including paying for Base Service or purchasing Other Services, (i) in an amount equal to two hundred thousand dollars (\$200,000) with respect to Contract Years 3 through 6, and (ii) in an amount equal to one hundred ninety thousand one hundred thirty-seven dollars (\$190,137) with respect to Contract Year 7. The Parties acknowledge that the provisions of this Section 7.2 shall not be construed as imposing on Contractor any obligation to perform Services associated with the implementation of any Shared Savings proposal beyond the Term.

### **7.3. Pricing Audit**

Contractor shall, at the County's request, allow auditors designated by the County that are not competitors of Contractor or its Subcontractors in the IT and telecommunications markets with respect to the provision of services similar to the Services and that are subject to reasonable confidentiality requirements to fully audit Contractor's books and records to the extent necessary to verify any amounts paid or payable by the County hereunder. Contractor shall provide such auditors with full access to such information relating to this Agreement and Contractor's books and records as may be necessary to confirm the accuracy of Contractor's invoices, documents, and other information supporting such invoices, and any pricing adjustment computations. All such audits shall be conducted during business hours, with reasonable advance notice, and shall include access to proprietary and confidential information to the extent necessary to comply with the provisions of this Section 7.3. If any such audit reveals that Contractor has overcharged the County in excess of five percent (5%) during the period to which the audit relates as determined prior to the commencement of the audit, then Contractor shall promptly refund such overcharges to the County and the cost of such audit shall be borne by Contractor.

### **7.4. Reduction of Payments**

If the County terminates as to any of the categories of Services described in Section 2.3 hereof, pursuant to the terms of Section 2.16 or Section 13.2.1 hereof, then the adjustments to the fees for such category of Services, as determined by the Management Committee, shall go into effect upon the effective date of such termination.

### **7.5. Taxes**

(a) All fees payable by the County to Contractor hereunder shall be inclusive of all taxes imposed as of the Effective Date by any domestic or foreign taxing authority in respect of the provision of the Services hereunder, including any sales, use, excise, value-added, services, consumption, or other tax (collectively, "Sales Tax(es)"); provided, however, that the County shall not be responsible for, and such fees shall not include, any personal property taxes on property Contractor owns or leases, for franchise and privilege taxes on Contractor's business, gross receipts taxes to which Contractor is subject, and for income taxes based on Contractor's net income. In the event that a Sales Tax becomes effective after the Effective Date and is assessed on the provision of Services by Contractor that are within scope as of the Effective Date or on Contractor's charges to the County under this Agreement related thereto, however levied or assessed, the County shall be responsible for and pay any such Sales Tax.

(b) The Parties agree to cooperate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible. Contractor's invoices shall separately state the amounts of any taxes Contractor is properly collecting from the County pursuant to the terms hereof.

## **7.6. Creation of Possessory Interest**

Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Contractor acknowledges that the terms of this Agreement may result in the creation of a possessory interest. If such a possessory interest is vested in Contractor, Contractor may be subjected to the payment of real property taxes levied on such interest. Contractor shall be solely responsible for the payment of any such real property taxes. Contractor shall pay all such taxes when due, and shall not allow any such taxes, assessments, or fees to become a lien against any Location or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Contractor from contesting the validity of any such tax, assessment, or fee in a manner authorized by law.

## **7.7. Benchmarking**

With the County's direction and cooperation, and as part of the Base Services, Contractor shall conduct a continuing benchmarking program that shall enable the County to compare the Fees and MASLs set forth in this Agreement with, and to ensure that said Fees and MASLs are among, the industry's best rates and practices. The County may request a benchmarking for any particular category of Services described in Schedules 1.4.2 or 2.3 hereof, at any time during the Term, and may request a benchmarking for all Services, in the aggregate, not more than once during any period of twelve (12) consecutive months during the Term. Contractor shall work with any benchmarking firm that the County selects that is not a competitor of Contractor or its Subcontractors in the IT and telecommunications markets with respect to the provision of services similar to the Services and shall reimburse the County for fifty percent (50%) of all fees and charges paid to such benchmarking firm. Each Party shall have the opportunity to advise the benchmarking firm of any information or factors that it deems relevant to the conduct of the benchmarking, so long as such information is disclosed to the other Party. The benchmarking firm shall provide reports on the benchmarking to both the County and Contractor. If, as a result of any such benchmarking, the benchmarking firm determines that the Fees or MASLs are not as good, from the County's perspective, as the industry's best rates and practices, then the Parties shall promptly make appropriate adjustments to the relevant Fees or MASLs in order that they meet such industry best rates and practices. The County understands that the Fees may include, in part, amortization of transition and other costs, infrastructure improvements, and carrying charges associated with the County's requirement of level pricing. Accordingly, the Parties will consider these factors when making appropriate adjustments to the relevant Fees to meet industry best rates and practices.

## **7.8. Other Services**

Contractor shall provide invoicing for Other Services with documentation that references the County's authorizing documentation, the County account number, charges, and description. No invoice with respect to Other Services shall be paid unless such Other Services were authorized in advance, in writing, by the Contracting Officer or any other person authorized by

the Contracting Officer in advance, in a document signed by the Contracting Officer that identifies all such persons with such authority. The total payments by the County to Contractor with respect to any Other Services shall not exceed the amount specified for such Other Services, unless authorized in advance, in writing, by the Contracting Officer.

#### **7.9. Initiatives**

For Initiatives, the County shall pay Contractor such amounts as may be determined through the provisions of Section 9 hereof.

#### **7.10. Incentives and Fee Reductions**

Schedule 7.10 specifies: (i) certain "Incentives" that may be earned by Contractor in the event Contractor's actual performance of Services as measured against the Critical Milestones or the Critical MASLs exceeds the County's expectations; and (ii) certain "Fee Reductions" that may be imposed in the event of any Failure in respect of Contractor's actual performance of Services as measured against the Critical Milestones or the Critical MASLs. The Parties acknowledge and agree that these Fee Reductions are intended to reflect, to some extent, the diminished value of the Services as a result of any such Failure; such Fee Reductions are not intended to compensate the County for any breach or Default by Contractor under this Agreement, nor to constitute penalties, damages, liquidated damages, or other compensation for any such breach or Default. In no event shall Fee Reductions be the County's sole and exclusive remedy with respect to any Failure of Contractor. In the event the County recovers damages from Contractor for any breach or Default with respect to any Failure, such damages shall be reduced to the extent of any Fee Reductions previously collected by the County in respect of such Failure. Notwithstanding anything to the contrary contained elsewhere in this Agreement, Contractor shall not be subject to any Fee Reductions, nor shall Contractor be entitled to earn any Incentives, in connection with the performance of any Critical Milestones with respect to any and all Contract Years beginning after December 31, 2001.

#### **7.11. Only Payments**

The Fees set forth in this Section 7 are the only payments to be made by the County to Contractor under this Agreement. Except as otherwise expressly stated in this Section 7, the County shall not pay Contractor any additional fees, assessments, or reimbursements, and Contractor shall be solely responsible for, and shall indemnify the County against, all costs and expenses incurred by Contractor in meeting Contractor's obligations under this Agreement, including labor expenses, hardware and software costs, and general business expenses (including travel, meals, and overhead expenses).

#### **7.12. Set-Off**

The County may set off against any and all amounts otherwise payable to Contractor pursuant to any of the provisions of this Agreement: (i) any and all amounts owed by

Contractor to the County under the provisions of Section 21; and (ii) other amounts claimed to be owed to the County by Contractor in respect of this Agreement or any other agreement between the Parties. Within twenty (20) days of any set-off by the County, the County shall provide to Contractor a written accounting of such set-off and a written statement of the reasons therefor.

### **7.13. Disputed Amounts**

Subject to and in accordance with the provisions of this Section 7.13, the County may withhold payment of any Contractor invoice (or part thereof) that it in good faith disputes are due or owing. In such case, the County shall, by the applicable due date, pay any amounts then due that are not disputed and provide to Contractor a written explanation of the basis for the dispute as to the disputed amounts. The failure of the County to pay a disputed invoice, or to pay the disputed part of an invoice, shall not constitute a breach or default by the County, so long as the County complies with the provisions of this Section 7.13. For purposes of Section 22, any dispute relating to amounts owed by a Party hereunder shall be considered a Problem. In any such event, the Parties shall diligently pursue an expedited resolution of the dispute. If and to the extent that the aggregate amount being disputed exceeds one million dollars (\$1,000,000.00), then, within ten (10) days after Contractor's request or such later date upon which any such amount may become due, the County shall deposit any disputed amount in excess of one million dollars (\$1,000,000.00) into an interest-bearing escrow account in a nationally-recognized financial institution reasonably acceptable to Contractor and shall furnish evidence of such deposit to Contractor; provided, however, that the aggregate amount withheld in respect of amounts being disputed by the County, including amounts paid into escrow, shall in no event exceed the Maximum Annual Fee for the year in which the dispute arose, notwithstanding any such dispute. Upon the resolution of any dispute as to which the County has deposited funds into escrow, the funds paid into the escrow account in respect of such dispute, together with any interest earned thereon and any expenses of opening and maintaining the escrow account, shall be allocated between the Parties in accordance with the resolution of the dispute.

### **7.14. Most-Favored Customer**

If Contractor offers to any new or existing customer any service similar to any of the Services described in this Agreement at a price lower or a discount greater than the price charged or the discounts offered to the County hereunder, or offers additional or a more comprehensive service at the same or a lower price (or greater discount), then, on a retroactive basis to the date such other offers were made, Contractor shall offer such lower price or greater discount to the County in lieu of the price therefor (or discount related thereto) that is reflected in the price set forth in this Agreement or shall offer to the County such additional or more comprehensive service at such same or lower price (or greater discount). If the price has already been paid to Contractor by the County, then Contractor shall refund to the County an amount equal to the difference between the price already paid and the lower price, plus interest at the rate of one percent (1%) per month from the date the overcharge was paid to Contractor until the date the refund is made. The County may offset any such overcharged amount against any amounts due to be paid to Contractor under this

Agreement or any other contract with the County. Contractor shall notify the County of the occurrence of the lower price or greater discount (or provision of additional or more comprehensive service) as described in this Section 7.14 upon discovery and in no event later than thirty (30) days after its implementation of such lower price or greater discount (or provision of additional or more comprehensive service). As of each anniversary of the Cutover Date, the Chief Financial Officer of Contractor's business unit performing the Services shall certify to the County in writing that Contractor is in compliance with this Section 7.14. The County understands that Contractor's pricing is based in part upon the following factors: the technology base used by the customer, the combination of services required by the customer, the MASLs or other service level standards required by the customer, the geographic location where the services are to be provided, the terms and conditions of the agreement to provide the services, and the overall revenue stream generated by the customer. The provisions of this Section 7.14 shall only apply if the services and terms and conditions offered by Contractor to the customer are reasonably similar in each of these respects to the Services provided to the County.

#### **7.15. Procurement Discounts**

Contractor shall notify the County in writing prior to entering into any transaction or series of transactions for the acquisition of any hardware or software assets to be utilized in connection with the Services the value of which transaction or series of transactions exceeds five hundred thousand dollars (\$500,000.00). Contractor's notification shall include a description of the schedule for, and terms and conditions of, such acquisition. If, within ten (10) days after the County's receipt of such notification, the County notifies Contractor in writing of any vendor from whom it can acquire the relevant assets on better terms and conditions than those described in Contractor's notification, Contractor shall acquire such assets from such vendor, on the terms and conditions described in the County's notification. If, in accordance with the provisions of this Section 7.15, Contractor acquires any assets from a vendor that has been identified in the County's notice, then Contractor shall grant a credit to the County in an amount equal to twenty-five percent (25%) of the difference between the cost of the assets acquired by Contractor from such vendor and the cost that Contractor would have incurred for the relevant assets if they had been acquired from the vendor with whom Contractor had originally intended to enter into a sales transaction. Such credit shall be reflected on the invoice delivered with respect to the month in which the relevant assets are acquired.

### **8. RELATIONSHIP MANAGEMENT**

#### **8.1. Personnel**

##### **8.1.1. Contractor Key Personnel and Key Positions**

Each of the Contractor Key Personnel shall have the functions assigned to him or her as set forth in Schedule 8.1.1, as such Schedule may be modified from time to time in accordance with this Agreement. The County shall have the right to interview, as the County deems